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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES

Forty-eighth session

SUMMARY RECORD OF THE 18th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 19 August 1996, at 10 a.m.

Chairman: Mr. EIDE

later: Mr. ALI KHAN

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The meeting was called to order at 10.20 a.m.

REVIEW OF THE WORK OF THE SUB-COMMISSION (agenda item 3) (continued)

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN CONCERNED (agenda item 4) (continued) (E/CN.4/Sub.2/1996/3, 6 and 7, and E/CN.4/1996/44)

1. Mr. ALFONSO MARTÍNEZ recalled that at the previous session he had been against the Sub-Commission considering draft resolution E/CN.4/Sub.2/1995/L.47 under agenda item 10 and that the Sub-Commission had decided to defer consideration of the draft resolution until its forty-eighth session under item 4. He would once again be opposed to such consideration since the draft resolution in question concerned the human rights situation in a particular country, namely Peru, and it was only under item 6 that such situations could be considered. Nevertheless, he thanked the Ambassador for Peru for having supplied a large volume of data which would prove most useful for better assessing the human rights situation in his country.

2. Mrs. GWANMESIA described at some length the history of the creation of the United Nations and its various bodies and the adoption of the main United Nations human rights instruments including the International Bill of Human Rights and declared that the Bill, with its five constituent instruments, among them the two International Covenants, exerted a major influence over treaties, Constitutions and national legislation. The Judges of the International Court of Justice invoked its provisions, national and local courts often quoted the principles enshrined within it and the Programme of Action which was adopted following the World Conference on Human Rights in Vienna made frequent reference to the Universal Declaration of Human Rights. However, despite the existence of a Bill which granted equal treatment for all, discrimination against minority groups still persisted in most countries, provoking conflict throughout the world. She referred to the establishment in 1947 of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities, recalling that the principle of non-discrimination was enshrined in numerous international declarations and that the rights of minorities were also safeguarded by article 27 of the International Covenant on Civil and Political Rights. The United Nations had been commissioning studies and reports on the protection of minorities since 1960. They provided a basis for the very important activities of the various working groups of the Sub-Commission in contributing to the elimination of racial discrimination and the protection of minorities.

3. Turning to the question of the methods of work of the Sub-Commission and with a view to avoiding needless duplication, she suggested that the reports of the Commission on Human Rights should be communicated to members of the Sub-Commission in time to enable them to study them in detail. Alternatively, the Sub-Commission could hold a six-week session but only meet in the mornings. In the afternoons, members would thus have time to study all the documents presented to them by the Commission, governmental observers or NGOs, without necessitating extra expenditure on interpretation or secretariat services. Regarding the Sub-Commission's rules of procedure, she emphasized the need for a secret ballot, since that was the only way to ensure that votes

were not unduly influenced. She also enjoined governmental observers and NGOs to act in good faith and minutely verify all data communicated to members of the Sub-Commission so that they might base their decisions on accurate information.

4. She then made a number of observations concerning agenda item 4. She congratulated Mrs. Warzazi on her report (E/CN.4/Sub.2/1996/6) concerning traditional practices affecting the health of women and children and stressed the importance of educating the masses through the media, whether radio, television or the Internet, as well as through seminars and conferences. With regard to HIV/AIDS, she suggested that the Sub-Commission should join forces with other international organizations in stressing the importance of prevention and non-discriminatory treatment of patients. It had been proposed that a study should be made of various issues connected with the recognition as an international crime of gross and flagrant violations of human rights. She had personally been requested to conduct a study of juvenile justice. Such a study was indeed called for since children were classified as a group in need of protection.

5. She suggested that a special rapporteur should be appointed to conduct a study on the crucial issue of human rights and the environment. She maintained that the resolution adopted in 1995 concerning the traumatic effects of land-mines was insufficient. It was necessary to know what happened to victims of those mines. She also lamented the fact that the Special Rapporteur responsible for the study on population transfer had not managed to produce his final report through the secretariat's failure to render him the required assistance. Stressing the importance of the issue for the hundreds of thousands of people who were victims of such transfers, she requested that the problem be attended to and that the Special Rapporteur be permitted to complete his work so that the Sub-Commission might adopt appropriate recommendations. She also expressed the hope that the Sub-Commission would join with the International Youth and Student Movement for the United Nations in reiterating its request that a third United Nations Conference to Combat Racism and Racial Discrimination be organized, for those particular forms of human rights violation lay at the root of mankind's misery. It would be desirable if such a conference coincided with the fiftieth anniversary of the Universal Declaration of Human Rights.

6. Finally, turning to the question of democracy, she congratulated Mr. El-Hajjé on his report (E/CN.4/Sub.2/1996/7) and said that democracy should not be used for egoistic ends and that account should be taken of the traditional background of each society. With a view to achieving real democracy and peace in the world, it had to be remembered that in addition to rights, everyone had duties towards others. In that connection she quoted article 29 of the Universal Declaration of Human Rights, emphasizing the need for its provisions to be respected.

7. Mrs. MBONU recalled that the Commission had severely criticized the work of the Sub-Commission in its resolution 1996/25. In accordance with the Commission's request, the Sub-Commission had therefore decided to review its working methods, including the manner in which it approached its role of monitoring human rights situations under Economic and Social Council resolutions 1235 (XLII) and 1503 (XLVIII). There were notably few experts in

favour of radical reform of the Sub-Commission's working methods, particularly regarding "country situations". Those who had recommended the drawing up of an annual report on the human rights situation based on information suppled by NGOs and special rapporteurs on countries, thematic rapporteurs and working groups of the Commission did not represent all the geographical regions. Other members of the Sub-Commission had vehemently opposed the proposal.

8. The raison d'être of the Sub-Commission was to carry out studies aimed at preventing discrimination and protecting the rights of vulnerable groups. The Sub-Commission's mandate had subsequently been expanded by Economic and Social Council resolutions 1235 (XLII) and 1503 (XLVIII) permitting it to study the human rights situations in various countries. The role the Sub-Commission played in that connection had been criticized by many Commission members as well as NGOs which accused it of adopting politically-motivated resolutions by secret ballot. With the reforms proposed, the Sub-Commission's role would be that of a body of independent experts using reports prepared by special and thematic rapporteurs, special representatives and by working groups of a purely political body. In the same vein, the Sub-Commission would be requested to prepare an annual world report based on information supplied by NGOs. Would there not be a contradiction between the criticisms voiced and the solutions proposed?

9. The annual report being envisaged would at the least be unfavourable to third world countries. The thematic reports, which would be among the sources of information used to draw up the report, usually focused on those countries. Moreover, the degree of manoeuvrability of the experts in expressing their personal views on different situations would be drastically eroded considering that the five geographical regions did not view violations of human rights from the same perspective. Third world countries, particularly non-aligned countries, had indeed always stressed the interrelatedness and indivisibility of all rights, whether they be civil and political or economic, social and cultural, and that affected their perception of violations of those rights. It was thus unrealistic to expect 26 members from 5 different regions to reach consensus in the preparation of an annual report on the human rights situation worldwide. Furthermore, there were practical difficulties: how, for example, were the two or five special rapporteurs appointed to prepare the report to be chosen, and what purpose was the report to serve?

10. Finally, it had also been claimed that the functions of some members of the Sub-Commission in their various countries were incompatible with their functions within the Sub-Commission. Such criticisms assumed that if members of the Sub-Commission were national civil servants, that prevented them from carrying out their mandate within the Sub-Commission and eroded their independence. The argument did not appear particularly valid given that there were other members of the Sub-Commission who were professors of international law, for example, or judges in their own countries and thus also susceptible to influences of one kind or another. Pressure could also be exerted by NGOs. Whatever the case might be, the selectivity, discrimination and one-sidedness often displayed by some members of the Sub-Commission in their drafting of resolutions on country human rights situations clearly indicated that no member could boast total independence.

11. Mr. KHALIFA remarked that the subject of democracy was so immense that it had occupied the attentions of writers and researchers since time immemorial. There had not been a single political leader who had not proclaimed his love of democracy, yet all those who made an honest attempt to attain it encountered great difficulties. Democracy was, however, a prerequisite for political stability, and political stability was necessary for economic progress and sustainable development. Nevertheless, a mere semblance of democracy could have dire consequences. Elections, even multi-party ones, could serve as a launch pad for anti-democratic factions. It had, after all, been thanks to free elections that the Nazis had risen to power. There were also many such examples in the third world, and in developed countries, numerous secret transactions occurred before, during and after elections. Democracy, it had been shown, was a living entity prone to unwholesome developments. Democracy could be viewed from two perspectives: the first purely theoretical, the second involving studying real-life democracy in action. He suggested that Mr. El-Hajjé might continue his study of democracy and the creation of a democratic society and be guided more by the second approach.

12. He also lamented the omission of the subject "human rights and terrorism" from the annotated agenda; he assumed it to be due to the fact that no working document had been prepared on the subject. No member of the Sub-Commission seemed willing to resume the study which had previously been entrusted to Mr. Ramadhane. He wondered whether statements on the subject made at the forty-seventh and current sessions might not be compiled in one document which would serve as a working document, thus permitting the issue to be kept under review under agenda item 4.

13. Mr. ALI KHAN recalled that, shortly after the World Conference on Human Rights had drawn attention to the important issue of human rights and terrorism, it had been the Sub-Commission which had taken the lead by adopting resolutions on the subject. At its forty-sixth session, the Sub-Commission had also decided to request one of its members to prepare a study on human rights and terrorism. The fact that no progress had been made in that regard did nothing to enhance the credibility of the Sub-Commission.

14. At the forty-seventh session of the Sub-Commission, Mr. Eide had stressed the need for a new agenda which would cover violations by non-State actors. It was regrettable that the Sub-Commission had not even managed to deliberate the issue at its previous session for want of time and, even more so, that the agenda for the current session did not even refer to the issue.

15. Recalling that in its resolution 1996/47 on human rights and terrorism the Commission on Human Rights had requested the Sub-Commission to report on the issue at its fifty-third session, he said that it was time the Sub-Commission reached a decision on the matter. He thus proposed that a member of the Sub-Commission should be requested to conduct a study on human rights and terrorism. A preliminary report could be submitted at the forty-ninth session of the Sub-Commission, and a final report at its fiftieth session. He also proposed that the issue of human rights and terrorism should be made a separate agenda item or sub-item at the forty-ninth session.

16. Mrs. PALLEY recalled that at the previous session she had proposed that the Sub-Commission should be abolished and its functions transferred to the Commission. Upon reflection, however, she now considered that, although such a move would certainly result in considerable savings, it would not be in the interests of human rights. Moreover, those who were not declared advocates of the human rights cause might take advantage of any radical shift in the Sub-Commission's mandate.

17. In its resolution 1996/25, the Commission on Human Rights invited the Sub-Commission to review its methods of work with a view to improving efficiency and avoiding duplication with the Commission (para. 9). The Sub-Commission was perfectly capable of achieving that goal within its present mandate, which was sufficiently broad and flexible. The Sub-Commission had successfully set about rationalizing its agenda (para. 9 (a) of the same resolution), as shown by the progress it had made. Concerning the choice of subjects for studies (para. 9 (b)), she applauded the fact that the experts had maintained their sang-froid and had proposed several studies, some of which should be retained, such as the working document on terrorism and human rights proposed by Mr. Khalifa.

18. Regarding the functioning and mandate of the Sub-Commission's mechanisms (para. 9 (c)), she voiced concern over the length, complexity and rigidity of the procedure stipulated by Economic and Social Council resolution 1503 (XLVIII) under which the Sub-Commission was empowered only to request countries cited in communications to respond to allegations against them. Usually, the countries concerned claimed that the allegations were groundless, and the matter was shelved. The Sub-Commission should be in a position to request those States to substantiate their denials. Moreover, before being referred to the Economic and Social Council and thus made public, a situation should pass through four filters: the Working Group on Communications of the Sub-Commission, where decisions must be made by consensus, the Sub-Commission in closed meetings, the Commission's Working Group on Situations and, finally, the Commission on Human Rights in closed meetings. The Sub-Commission could thus propose that the first two filters should be removed. The Working Group on Situations would then truly possess an overall picture of allegations of human rights violations worldwide, and experts of the Working Group on Communications could devote themselves to other activities.

19. Concerning the need for the Sub-Commission to focus on the implementation of existing human rights standards and mechanisms (para. 9 (d)), she said that the idea of preparing an annual report on an experimental basis was most judicious, but that there was a misunderstanding which needed to be clarified. It had never been intended that the Group of Experts drafting the report should endorse the opinions of the Commission, which was a political body, or the conclusions of the special rapporteurs. The Group of Experts could equally well draw upon other sources of information it deemed relevant, such as replies from Governments. Moreover, the members of the Group should be designated by the various regional groups, and not by the Chairman. As for the need for enhanced cooperation with other human rights mechanisms and bodies (para. 9 (f)), she drew attention to the fact that the Sub-Commission already cooperated with the Committee on the Elimination of Racial Discrimination, but that it ought also to keep more

abreast of the work of other bodies and special rapporteurs. It should be possible for those experts who so wished to receive relevant documents at home, to allow time for proper perusal.

20. Regarding the composition of the Sub-Commission and criteria for membership (para. 9 (g)), she said that the independence of experts was a relative notion, and that there was little point in belabouring the point. In that connection, Mr. Alfonso Martínez had maintained that Governments had questioned the independence of the Sub-Commission at a meeting of the Economic and Social Council. According to her information, the Sub-Commission had never been the object of such an attack. The two Governments concerned had merely been surprised that an expert member of the Sub-Commission made frequent trips to Geneva for the purpose of conducting a particularly costly study, despite being his country's representative in Geneva.

21. Mr. GUISSE urged Mr. El-Hajjé to draft a working document on democracy which would preferably address not only civil and political rights, but also the need to fairly distribute the fruits of labour. Indeed, it came as no surprise that citizens were losing interest in democracy when they suffered from poverty and exclusion and when each day constituted a battle for survival.

22. He maintained that discussions on the "1503 procedure" should take place in a closed meeting in accordance with the principle of confidentiality.

23. Mr. ALFONSO MARTÍNEZ said he shared the point of view of the previous speaker regarding the duty on the part of the experts of the Sub-Commission to respect the confidential aspects of the "1503 procedure". In that connection, he stressed that it was always the same countries who attempted to dispense with the confidentiality of the procedure with a view to using communications submitted under the procedure concerning certain countries for the purposes of propaganda.

24. He drew attention to the fact that the members of the Working Group on Communications were not bound to take decisions by unanimity. Resolution 1990/41 of the Economic and Social Council regarding the creation of the Working Group on Situations contained no provision concerning the manner in which the Group should make decisions. It was thus quite within the power of the members of the Commission to fill in the gap as they saw fit. In any event, the matter did not fall within the remit of the members of the Sub-Commission.

25. The expert to whom Mrs. Palley had alluded was the person responsible for carrying out a study on the importance of the treaties, agreements and other constructive arrangements concluded between indigenous populations and States, namely himself. According to information obtained from the secretariat by the expert, the delegation of the United Kingdom had declared in substance at a meeting of the Economic and Social Council that the study in question was clearly of only secondary importance and that it was excessively expensive, and had queried why the writer of the report had requested reimbursement of travel costs to Geneva given that he represented his country in that city. The delegation of the Netherlands had apparently supported the remark. He wished to clarify that he did not represent his country in Geneva.

He occasionally visited the city as an expert member of the Sub-Commission, as an academic, on the invitation of an NGO, or to represent his country in the Commission on Human Rights. Many experts carried out other activities in Geneva after completing tasks entrusted to them by the United Nations without anyone finding fault. It was thus odd to say the least that a Cuban citizen had been the sole butt of the two aforementioned delegations.

26. Mr. LINGREN ALVES fully endorsed Mr. Khalifa's draft working document on terrorism and human rights. Indeed, it was a vital issue which warranted inclusion in the agenda of the following session.

27. Mr. CHERNICHENKO said that the study on democracy which Mr. EL-Hajjé had offered to prepare was of great importance and should not give rise to objections. It was to be hoped that the links between democracy which was first and foremost a political and legal concept, and respect for human rights would be emphasized, although, as Mr. Guissé had stressed, economic aspects must not be neglected.

28. It would also be helpful to have the summary records on agenda item 6 made available to experts.

29. The CHAIRMAN said that Mr. Guissé would reply to the question at the following meeting.

30. Mr. KHALIFA said that Mrs. Koufa, Mrs. Daes' alternate, was ready to prepare the working document on human rights and terrorism proposed by Mr. Ali Khan without financial implications. Mrs. Koufa possessed all the necessary qualifications and the Sub-Commission could prepare a draft decision to entrust her with the task.

31. Mrs. DAES supported Mr. Khalifa's proposal.

32. The CHAIRMAN said that the necessary draft decision would be prepared.

33. Mr. MAXIME urged Mr. El-Hajjé to continue his study of democracy and the creation of a democratic society despite the financial difficulties and lack of cooperation he had encountered in his work, given the great importance of the issue.

34. Mr. EL-HAJJE thanked all those who had assisted and encouraged him in his work. He explained that, in the first working document, he had attempted first and foremost to demonstrate every person's right to be protected in the exercise of basic human rights.

35. Ms. TIMBERLAKE (UNAIDS) said that the Joint United Nations Programme on HIV/AIDS brought together UNDP, UNESCO, the United Nations Population Fund, UNICEF, WHO and the World Bank in an effort to combat the epidemic.

36. The Joint United Nations Programme on HIV/AIDS had grown from the recognition of the fact that HIV/AIDS was not merely a health problem, but the consequences and cause of socio-economic discrimination and violations of human rights. It was thus no accident that 90 per cent of those infected with HIV or AIDS lived in developing countries, and that, in all societies it was

marginalized groups who proved the most vulnerable. It was thus up to the Sub-Commission with its mandate of preventing discrimination and protecting minorities to take action in response to the epidemic. More than 21 million adults and children were carriers of HIV, and 8,500 people, including 1,000 children, were infected daily. In 1995 alone, 1.3 million people had died from AIDS, including 300,000 children under five. Above and beyond those alarming statistics it was discrimination which made the situation of the sufferers all the more cruel.

37. She then drew the attention of the Sub-Commission to the link between HIV/AIDS and the denial of certain human rights, including the right of women and certain others to sexual autonomy, the rights of indigenous peoples, and the right to freedom of movement of those living with HIV/AIDS.

38. Paragraph 97 of the Platform for Action of the (Fourth) World Conference on Women in Beijing asserted the right of women to control their own sexuality and reproductive health and to be free from sexual violence and coercion. Any sexual relationship into which women or girls were forced, whether it constitute rape or sexual slavery in the context of marriage or forced relationship increased their vulnerability to infection as did any situation in which they had no possibility of negotiating safe sex or using contraception. Women's right to sexual self-determination had thus become a matter of life or death. Other groups denied sexual self-determination, such as homosexuals and transsexuals, were also profoundly affected by the epidemic. In more than 80 countries, the law still prohibited or regulated homosexuality between consenting adults. While matters of sexuality inevitably raise complex and sensitive religious and cultural issues, they also raised compelling human rights and public health concerns, given the current epidemic. Legislation prohibiting homosexuality hampered public health efforts to control the spread of the virus, and violated certain fundamental rights such as the right to privacy and to health, with the people concerned being denied access to AIDS information programmes and to treatment.

39. Indigenous people were gravely affected by the epidemic in a number of countries due not only to their lack of access to information and health services, but also to the fact that those services were ill-adapted to their needs and to the lack of preventive and support programmes geared to their own cultural, linguistic and social traditions.

40. Turning to freedom of movement, she said that more than 50 countries imposed restrictions concerning the entry and stay of people infected with HIV. Such measures affected thousands of people, a majority of whom were migrant workers, students, asylum-seekers, overseas employees and AIDS activists. Restricting freedom of movement based on HIV status alone constituted an act of discrimination and could not be justified on public health grounds. Finally, human rights imperatives such as claims for asylum or family reunion must prevail over economic concerns.

41. UNAIDS therefore requested the Sub-Commission to assist it in addressing such difficult problems. It thanked the Sub-Commission for supporting the Second International Consultation on HIV/AIDS and Human Rights to be held in Geneva in September 1996, which should lead to directives being adopted concerning the concrete measures which States could implement to redress human

rights violations related to HIV. For the epidemic to be controlled it was necessary to challenge traditional practices, cultural norms and deeply-imbedded prejudices which hampered the effective protection of the rights to life, health and dignity.

42. Mr. Ali Khan took the Chair.

43. Mr. KOMBA-KONO (African Commission of Health and Human Rights Promoters - CAPSDH) said that CAPSDH was gravely concerned about the spread of HIV/AIDS which had ravaged many countries and infected 10 million people in Sub-Saharan Africa, according to the International Conference on AIDS held in Vancouver (Canada) from 15 to 30 July 1996. There were 21.8 million people infected by HIV or AIDS, and 8.5 million had already died of the disease.

44. It was a well-known fact that 90 per cent of sufferers lived in developing countries and that 90 per cent of available resources for combating the disease was being spent in developed countries. That policy, which amounted to caring for the rich and excluding the poor, was inhuman and unjust. CAPSDH, through the African Association Against AIDS which coordinated its activities in African member countries, was attempting to promote preventative action through seminars and workshops to sensitize people to the problem and through dissemination of information on the disease and on measures to reduce the risk of infection. CAPSDH shared the opinion of the Director of UNAIDS that the Programme should address the care of HIV patients, not merely preventative measures, and that AIDS in the developing world was fundamentally a development problem.

45. CAPSDH hoped to participate in the UNAIDS programme for Africa with regard to research allocations, assistance to non-governmental organizations and access for African AIDS sufferers to existing treatments, currently beyond their reach due to the very high cost.

46. Mr. LITTMAN (World Federalist Movement) congratulated Mrs. Warzazi on her final report on traditional practices affecting the health of women and children (E/CN.4/Sub.2/1996/6) and expressed the hope that her mandate would be renewed. The euphemistic expression "traditional practices affecting the health of women and children" actually meant the sexual mutilation suffered by two million young girls each year. Long considered a taboo subject, since they arose from specific social and cultural backgrounds, those ignominious rituals were the subject of a World Health Organization technical working group report marking a significant change. WHO asserted its determination to abolish all forms of genital mutilation in women and girls, and condemned its medicalization, namely the involvement of health professionals in those practices. Even if Governments tended to be reluctant to deal with such issues because of the political dimension, some had adopted legislative measures as in Sweden, France, the United Kingdom and Switzerland. In countries in Africa and the Middle East where such practices were widespread, Governments were too weak or divided on the issue to pass legislation. Nevertheless, the work of certain African NGOs, such as in the Inter-African Committee, was to be commended.

47. Mrs. Warzazi in her report stressed that traditional practices would not be eradicated in the absence of Government determination to act (para. 148) and that given the tenacity of such practices, religious leaders must be motivated to condemn them in their preaching, and thus contribute to dispelling erroneous beliefs (para. 177(k)). Although, according to the aforementioned WHO report, the Koran did not prescribe such practices, the former Grand Sheikh of Al-Azhar had issued a fatwa in 1981 according to which circumcision was obligatory and excision "recommended". It was to be hoped that the current Grand Sheikh who was more moderately inclined, would be encouraged by the Egyptian Government, and perhaps also by the members of the Sub-Commission, to issue a new fatwa more in line with the true Islamic position.

48. He denounced the position of a jurist and member of the Swiss Institute of Comparative Law in Lausanne, who, at a recent symposium at Lausanne University, had drawn an insidious parallel between circumcision and excision. Such an aberration could only hamper efforts to eradicate excision, a cruel Pharaonic tradition which should have long been defined as torture, if not a crime against humanity.

49. Mr. Eide resumed the Chair.

50. Mr. URRUTIA (Observer for Peru) announced the approval by the Peruvian Congress of the previously mentioned bill put forward by the President of the Republic proposing the establishment of a committee to review court decisions. The committee was to commence its work in the near future.

The meeting rose at 1.05 p.m.